IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

LA.App..No. 1474 of 2005()

LAR.80/2003 of III ADDL.SUB COURT, ERNAKULAM
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APPELLANT: CLAIMANT

SUHARA KAREEM, AGED 46 YEARS,
W/O.P.K.ABDUL KAREEM, PUTHEDAT HOUSE,
PONNURUNNI, KOCHI.

BY ADV. SRI.M.M.ABDUL AZIZ (SR.)
SRI.M.A.ABDUL HAKHIM
SRI.JYOTHISH.J.KALLINGAL

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA, REPRESENTED BY
SPECIAL TAHSILDAR,(LA) NO.III,
VYTTILA, ERNAKULAM.

2. THE MANAGING DIRECTOR,
ROADS AND BRIDGES DEVELOPMENT CORPORATION OF
KERALA LTD., PALARIVATTOM, KOCHI.

BY GOVERNMENT PLEADER SRI.MANOJKUMAR.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & K.T.SANKARAN, JJ.

L.A.A.No.1474 of 2005

Dated 12th March, 2007.

J U D G M E N T

Kurian Joseph, J.

This is an appeal filed against the judgment and decree in L.A.R.80/03 on the file of the III Additional Sub Court, Ernakulam. In the nature of the view we propose to take in this case, it is not necessary to extensively refer to the factual background of the case.

2. An extent of 3.879 cents from a plot of 24.750 cents in survey No.555/3-30 of Poonithura village was acquired for the purpose of construction of railway over bridge at Punnurunni. Section 4(1) notification was issued on 28.5.2002 and the land was taken possession on 22.7.2003. The reference court placed reliance on the judgment of the Sub Court, Ernakulam in L.A.R.No.157/2000, where the property was acquired for another purpose. Section 4(1) notification in that case was issued on 15.2.1997 and the land value fixed was Rs.1,08,296/- per cent. The contention of the learned senior counsel is that going by the decision of the Supreme Court in **Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun**

v. Bipin Kumar and another [(2004)2 SCC 283] , the claimant is entitled to increase at the rate of 15% per year. Though it is not a mandatory requirement, it is seen from the judgment under appeal that the reference court has followed the same principle. However, a mistake has crept in while calculating the increase. What is granted is only 15% increase per year on the land value from 2000. Since Section 4(1) notification in L.A.R.No.157/2000 was issued on 15.2.1997 and since Section 4(1) notification in the present case was issued on 28.5.2002, the claimant is entitled, going by the very same principle followed by the reference court, for 15% increase per year. Therefore, it is declared that the claimant will be entitled to 75% increase on the value of Rs.1,08,296/- per cent, that is awarded in L.A.R.No.157/2000. Though the learned senior counsel vehemently contended that the property is situated close to the junction, another 5% increase also is to be given, we are not inclined to appreciate the said contention, since the claimant is given a fairly reasonable enhancement of compensation by granting 75% increase on the land value in L.A.R.No.157/2000.

3. Learned senior counsel pointed out that there is an error apparent on the face of the decree itself, while calculating

the value of improvements. At paragraph 15 of the judgment under appeal, the reference court has granted an amount of Rs.5,808/- as enhancement in the value of structures. However, that amount is not taken into consideration while granting the decree. Therefore, it is declared that the appellant/claimant will be entitled to the said amount of Rs.5,808/- as enhancement in the value of structures, which is already granted by the reference court.

4. Learned senior counsel further contended that since a small portion is acquired out of a larger extent, the claimant is also entitled to compensation by way of injurious affection. We are afraid that the contention cannot be appreciated. Admittedly, the property is situated near to Vyttila junction and every bit of land is put to profitable use despite the acquisition for the railway over bridge. Therefore, it cannot be said that the claimant has sustained injurious affection for the left out portion of the land.

In the above circumstances, the appeal is partly allowed. The appellant/claimant will be entitled to Rs.1,85,000/- per cent with statutory benefits. She will also be entitled to Rs.5,808/- as enhancement in the value of structures, along with

eligible interest.

KURIAN JOSEPH, JUDGE.

K.T.SANKARAN, JUDGE.

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KURIAN JOSEPH & K.T.SANKARAN, JJ

L.A.A. NO. OF 2004

J U D G M E N T

Dated 8th March, 2007.